IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 366 of 2001
in
SPECIAL CIVIL APPLICATION No 13113 of 2000
with
CIVIL APPLICATION NO. 5178 OF 2001
AND
LETTERS PATENT APPEAL NO. 367 OF 2001
in
SPECIAL CIVIL APPLICATION NO. 13120 OF 2000
with
CIVIL APPLICATION NO. 5179 OF 2001
AND
LETTERS PATENT APPEAL NO. 368 OF 2001
in
SPECIAL CIVIL APPLICATION NO.13115 OF 2000
WITH
CIVIL APPLICATION NO. 5180 OF 2001
AND
LETTERS PATENT APPEAL NO. 369 OF 2001
in
SPECIAL CIVIL APPLICATION NO. 426 OF 2001
with
CIVIL APPLICATION NO.5181 OF 2001
AND
LETTERS PATENT APPEAL NO. 370 OF 2001
in
SPECIAL CIVIL APPLICATION NO. 427 OF 2001
with
CIVIL APPLICATION NO. 5182 OF 2001
AND
LETTERS PATENT APPEAL NO. 371 OF 2001
in
SPECIAL CIVIL APPLICATION NO.424 OF 2001
with
CIVIL APPLICATION NO. 5183 OF 2001
AND
LETTERS PATENT APPEAL NO. 372 OF 2001
in
SPECIAL CIVIL APPLICATION NO.13116 OF 2000
with
CIVIL APPLICATION NO.5184 OF 2001
AND
LETTERS PATENT APPEAL NO. 373 OF 2001
in
SPECIAL CIVIL APPLICATION NO. 717 OF 2001
with

CIVIL APPLICATION NO. 5185 OF 2001
AND
LETTERS PATENT APPEAL NO. 374 OF 2001
in
SPECIAL CIVIL APPLICATION NO. 13119 OF 2000
with
CIVIL APPLICATION NO. 5186 OF 2001
AND
LETTERS PATENT APPEAL NO. 375 OF 2001
in
SPECIAL CIVIL APPLICATION NO. 13121 OF 2000
with
CIVIL APPLICATION NO.5187 OF 2001
AND
LETTERS PATENT APPEAL NO. 376 OF 2001
in
SPECIAL CIVIL APPLICATION NO. 13117 OF 2000
with
CIVIL APPLICATION NO. 5188 OF 2001
AND
LETTERS PATENT APPEAL NO. 377 OF 2001
in
SPECIAL CIVIL APPLICATION NO. 13118 OF 2000
with
CIVIL APPLICATION NO. 5189 OF 2001
WITH
LETTERS PATENT APPEAL NO.378 OF 2001
in
SPECIAL CIVIL APPLICATION NO.13114 OF 2000
with
CIVIL APPLICATION NO. 5190 OF 2001
AND
LETTERS PATENT APPEAL NO. 379 OF 2001
in
SPECIAL CIVIL APPLICATION NO. 13034 OF 2000
with
CIVIL APPLICATION NO. 5191 OF 2001
AND
LETTERS PATENT APPEAL NO. 380 OF 2001
in
SPECIAL CIVIL APPLICATION NO. 425 OF 2001
with
CIVIL APPLICATION NO. 5192 OF 2001
AND
LETTERS PATENT APPEAL NO. 381 OF 2001
in
SPECIAL CIVIL APPLICATION NO. 12232 OF 2000
with
CIVIL APPLICATION NO. 5193 OF 2001
AND
LETTERS PATENT APPEAL NO. 382 OF 2001

in
SPECIAL CIVIL APPLICATION NO. 12416 OF 2000
with
CIVIL APPLICATION NO. 5194 OF 2001
AND
LETTERS PATENT APPEAL NO. 383 OF 2001
in
SPECIAL CIVIL APPLICATION NO. 12233 OF 2000
with
CIVIL APPLICATION NO.5195 OF 2001
AND
LETTERS PATENT APPEAL NO. 384 OF 2001
in
SPECIAL CIVIL APPLICATION NO. 12420 OF 2000
with
CIVIL APPLICATION NO. 5196 OF 2001
AND
LETTERS PATENT APPEAL NO. 385 OF 2001
in
SPECIAL CIVIL APPLICATION NO. 12415 OF 2000
with
CIVIL APPLICATION NO. 5197 OF 2001
AND
LETTERS PATENT APPEAL NO. 386 OF 2001
in
SPECIAL CIVIL APPLICATION NO. 12234 OF 2000
with
CIVIL APPLICATION NO. 5198 OF 2001
AND
LETTERS PATENT APPEAL NO. 387 OF 2001
in
SPECIAL CIVIL APPLICATION NO. 12414 OF 2000
with
CIVIL APPLICATION NO. 5199 OF 2001
AND
LETTERS PATENT APPEAL NO. 388 OF 2001
in
SPECIAL CIVIL APPLICATION NO. 12486 OF 2000
with
CIVIL APPLICATION NO. 5200 OF 2001
AND
LETTERS PATENT APPEAL NO. 389 OF 2001
in
SPECIAL CIVIL APPLICATION NO. 12321 OF 2000
with
CIVIL APPLICATION NO. 5201 OF 2001
AND
LETTERS PATENT APPEAL NO. 390 OF 2001
in
SPECIAL CIVIL APPLICATION NO. 12417 OF 2000
with

CIVIL APPLICATION NO. 5202 OF 2001
AND
LETTERS PATENT APPEAL NO. 391 OF 2001
in
SPECIAL CIVIL APPLICATION NO. 12418 OF 2000
with
CIVIL APPLICATION NO. 5203 OF 2001
AND
LETTERS PATENT APPEAL NO. 398 OF 2001
in
SPECIAL CIVIL APPLICATION NO. 12423 OF 2000
with
CIVIL APPLICATION NO. 5314 OF 2001
AND
LETTERS PATENT APPEAL NO. 399 OF 2001
in
SPECIAL CIVIL APPLICATION NO. 12214 OF 2000
with
CIVIL APPLICATION NO. 5315 OF 2001
AND
LETTERS PATENT APPEAL NO. 400 OF 2001
in
SPECIAL CIVIL APPLICATION NO. 12424 OF 2000
with
CIVIL APPLICATION NO. 5316 OF 2001
AND
LETTERS PATENT APPEAL NO. 421 OF 2001
in
SPECIAL CIVIL APPLICATION NO. 13032 OF 2000
with
CIVIL APPLICATION NO. 5355 OF 2001
AND
LETTERS PATENT APPEAL NO. 428 OF 2001
in
SPECIAL CIVIL APPLICATION NO. 12877 OF 2000
with
CIVIL APPLICATION NO. 5396 OF 2001
AND
LETTERS PATENT APPEAL NO. 439 OF 2001
in
SPECIAL CIVIL APPLICATION NO. 12853 OF 2000
with
CIVIL APPLICATION NO. 5472 OF 2001
AND
LETTERS PATENT APPEAL NO. 478 OF 2001
in
SPECIAL CIVIL APPLICATION NO. 13242 OF 2000
with
CIVIL APPLICATION NO. 5718 OF 2001
AND
LETTERS PATENT APPEAL NO. 479 OF 2001

in
SPECIAL CIVIL APPLICATION NO. 12489 OF 2000
with
CIVIL APPLICATION NO. 5720 OF 2001
AND
LETTERS PATENT APPEAL NO. 480 OF 2001
in
SPECIAL CIVIL APPLICATION NO. 12516 OF 2000
with
CIVIL APPLICATION NO. 5721 OF 2001
AND
LETTERS PATENT APPEAL NO. 482 OF 2001
in
SPECIAL CIVIL APPLICATION NO. 12641 OF 2000
with
CIVIL APPLICATION NO. 5774 OF 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATEL JITENDRAKUMAR KANTILAL
Versus
DISTRICT PRIMARY EDUCATION OFFICER

Appearance:
FOR APPELLANTS :
LPA Nos. 366 to 380 of 2001 : Mr.R.R.Vakil.

LPA Nos. 381 to 391, 428, 439, 478, 479, and 480 of 2001:
Mr.Yatin Oza with Mr.Nirzar Desai.

LPA No. 482 of 2001:
Mr.Nirzar Desai for Mr.B.P.Gupta.

LPA Nos. 398, 399 and 400 of 2001:
Mr.A.J.Yagnik.

LPA Nos. 421 of 2001:
Mr.Nirmal Mehta for Mr.Mukesh R.Shah

FOR RESPONDENTS :
LPA Nos.366 to 380 of 2001 : Mr.P.V.Hathi and Ms.Khyati Hathi for District Panchayat, Jamnagar.

LPA Nos.381 to 391 and 478 to 482 of 2001:
Mr.D.C.Dave for District Panchayat, Valsad.

LPA Nos.428 and 439 of 2001:
Mr.H.S.Munshaw for District Panchayat, Bhuj.

Mr.Arun D.Oza, ld.Govt. Pleader for State of Gujarat and all other State functionaries in all the matters.

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE N.G.NANDI

Date of decision: 12/07/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

Out of these 36 Letters Patent Appeals, 34 Letters Patent Appeals are directed against the common orders dated 21st April 2001 passed in Special Civil Applications Nos.13113/2000, 13120/2000, 13115/2000. 426/2001, 427/2001, 424/2001, 13116/2000, 717/2001, 13119/2000, 13121/2000, 13117/2000, 13118/2000, 13114/2000, 130034/2000, 425/2001, 12232/2000, 12416/2000, 12233/2000, 12420/2000, 12415/2000, 12234/2000, 12419/2000, 12486/2000, 12321/2000, 12417/2000, 12418/2000, 12423/2000, 12214/2000, 12424/2000, 13032/2000,13242/2000, 12489/2000, 12516/2000 and 12641/2000 and two Letters Patent Appeals Nos.428/2001 and 439/2000 are directed against the common order dated 19th April 2001 whereby the Special Civil Applications Nos.12877/2000 and 12853/2000 were decided. Whereas all these Letters Patent Appeals arise out of the common orders as aforesaid and we find that common questions arise for our consideration based on identical facts, we propose to decide all these 36 Letters Patent Appeals by this common judgment and order as under:

2. The appellants (original petitioners) in Letters Patent Appeals Nos.366 to 380 of 2001 had obtained educational qualification of Certificate in Physical

Education (C.P.Ed.) prior to 1993 from the Institutions in Maharashtra State, namely, Bharatiya Sharirik Shikshan Mahavidyalaya run by Hanuman Vyayam Prasarak Mandal, at Amravati, Dr.Babasaheb Nandurkar College of Physical Education, Yavatmal and Wardha. These candidates applied in response to the advertisement issued on 11th Nov.1999 for recruitment to the post of Vidya Sahayaks in the District Panchayat, Jamnagar. The appellants applied in response to the said advertisement on the basis of the qualification as aforesaid, they were selected for appointment as Vidya Sahayaks and were given appointment as Vidya Sahayaks in the year 1999-2000. While they were working as such, they were subjected to the show cause notices on different dates and after the show cause notices, their services were terminated on different dates as per the details furnished by them in respective cases.

3. Similarly, the appellants in Letters Patent Appeals Nos.381 to 391, 478 to 480 and 482 of 2001 had also obtained the qualification of C.P.Ed. from Bharatiya Sharirik Shikshan Mahavidyalaya, run by Hanuman Vyayam Prasarak Mandal, at Amravati and Yavatmal, Maharashtra prior to 1993 and had also applied for appointment as Vidya Sahayaks in the year 1999-2000 in the District Panchayat, Valsad and they were appointed on different dates in the year 1999-2000. They were also subjected to the show cause notices dated 15th Nov.2000 and thereafter they were terminated on 4th Dec.2000.

4. The appellants in Letters Patent Appeals Nos.428 and 439 of 2000 had also obtained similar qualification of C.E.Ped. from the aforesaid two institutions prior to 1993 and they had also applied for appointment as Vidya Sahayaks in the Kachchh District Panchayat and on their selection, they were appointed in 1999-2000 on different dates. They were also subjected to the show cause notices on 6th Dec.2000 and they were terminated on 8th Dec.2000 by the concerned District Panchayat.

5. The appellants in Letters Patent Appeals Nos. 398 to 400 of 2001 had obtained the same qualification from Bharatiya Sharirik Shikshan Mahavidyalaya, run by Hanuman Vyayam Prasarak Mandal at Amravati, Maharashtra prior to 1993. They also applied for appointment as Vidya Sahayaks in District Panchayat, Dangs and on being selected, they were appointed as such, in the year 1999-2000. While they were working as Vidya Sahayaks, they were subjected to the show cause notices dated 16.11.2000 as to why their services should not be terminated. It may be mentioned that they had approached

this Court at the stage of show cause notice and had obtained ad-interim order against their proposed termination and therefore, the termination order could not be passed in these three cases.

6. Similarly, the appellant in Letters Patent Appeal No. 421 of 2001 had also obtained similar qualification of C.P.Ed. prior to 1993 from Amravati College and he also applied for appointment for the post of Vidya Sahayak in District Panchayat, Bhavnagar. On being selected, he was appointed as Vidya Sahayak and was subjected to the show cause notice and termination thereafter.

7. All these appellants filed Special Civil Applications before this Court and out of the 36 Special Civil Applications, 34 have been decided by the common order dated 21st April 2001 and two have been decided by the common order dated 19th April 2001 as aforesaid.

8. The orders which have been passed with regard to the termination show that as per the letter of Regional Director, Bhopal, dated 5th July 2000, no institution of the State of Maharashtra had been recognised by the National Council of Teachers Education for the course of C.P.Ed. and therefore, the Director of Primary Education for the State of Gujarat, issued a letter dated 13th Nov.2000 that the candidates holding the qualification of C.P.Ed. from the institutions of Maharashtra are required to be discharged from services. The Senior Superintendent, Primary Education, therefore, reported for discharge of such Vidya Sahayaks who had the qualification of C.P.Ed. from the institutions of Maharashtra which were not recognised by the National Council of Teachers Education. The termination order also shows that the opportunity was given by way of show cause notices as to why the services of the Vidya Sahayaks should not be terminated and whereas they failed to show that the qualification of C.P.Ed. held by them was recognised by the National Council of Teachers Education, the termination orders were passed.

9. Learned Single Judge has considered the challenge which was thrown to such orders/show cause notices in all the 36 Special Civil Applications and the petitions have been rejected by the common orders as aforesaid. The learned Single Judge has placed reliance on the earlier decisions rendered by this Court in Special Civil Application Nos.2969 of 1991 and 8052 of 2000 decided on 19th Jan.2001 and 15th March 2001. It has been found that the qualification held by the appellants was not

recognised by the National Council of Teachers Education and therefore, the termination of their services was justified. The grievance was also raised with regard to the breach of principles of natural justice and the learned Single Judge has found that in the facts of the present cases, there is no violation of principles of natural justice inasmuch as the petitioners failed to show that any prejudice has been caused to them. The learned Single Judge has relied upon the principle that those who complain of breach of audi alterm partem must show that such breach has resulted into any prejudice against them and in case the party complaining of the principles of natural justice fails to satisfy the Court that he had a reasonable and plausible defence in the matter which could not be urged for lack of opportunity of hearing, then and then only such grievance can be entertained. While taking this view, the learned Single Judge has referred to the judgment rendered in Special Civil Application No.8052 of 2000 decided on 15th March 2001.

10. While assailing the impugned orders in these Letters Patent Appeals, it has been argued on behalf of the appellants that, at the point of time when they obtained the qualification of C.P.Ed. the National Council for Teacher Education Act, 1993 was not there and therefore, there is no question of recognition of this qualification under the aforesaid Act. It is also submitted that they had produced their certificates with regard to their qualification as aforesaid and they were appointed on the basis of their selection in response to the advertisement inviting applications for recruitment on the post of Vidya Sahayaks and merely because the National Counsel for Teacher Education Act, 1993 had come into force after obtaining the qualification by them, they could not be terminated from the services more particularly because even at the time, i.e. 1999-2000 when they were appointed, the National Counsel for Teacher Education Act was in force which had come into force on 10th July 1995 and yet the appointments were given to them on the basis of the qualification of C.P.Ed. held by them and that the learned Single Judge has wrongly decided the question of breach of principles of natural justice against them.

11. The National Council for Teacher Education Act, 1993 was enacted to provide for the establishment of the National Council for Teacher Education with a view to achieving planned and co-ordinated development of the teacher education system throughout the country, the regulation and proper maintenance of norms and standards

in the teacher education system and for matters connected therewith. Since this Act was enacted and it came into force on 10th July 1995, according to Sec.17(4) of this Act, the holders of qualifications which were not recognised under this Act could not be appointed as teachers/Vidya Sahayaks and the consequences of the contravention of the provisions of this Act have been elaborated under Sec.17. Section 17(4) of the Act is reproduced as under for ready reference:

"17(4) If an institution offers any course or training in teacher education after the coming into force of the order withdrawing recognition under sub-section (1), or where an institution offering a course or training in teacher education immediately before the appointed day fails or neglects to obtain recognition or permission under this Act, the qualification in teacher education obtained pursuant to such course or training or after undertaking a course or training in such institution, shall not be treated as valid qualification for purposes of employment under the Central Government, any State Government or University, or in any school, college or other educational body aided by the Central Government or any State Government."

It will be clear from sub-section (4) of Sec.17 as aforesaid that the qualification in teacher education obtained pursuant to a course or training in teacher education offered by any institution shall not be treated as a valid qualification for the purpose of employment under the Central Government, in State Government, University, or in any school, college, or other educational body aided by the Central Government or by the State Government. Thus, the recognition of the qualification under the National Council for Teacher Education Act, 1993 is a mandatory requirement for the purpose of appointment as teacher and any holder of a qualification which is not recognised under this Act is not eligible to be appointed as teacher in the District Panchayats. In this view of the matter, it is clear that all these appellants were lacking the basic requirement and eligibility for appointment as Teacher and their appointment right from its inception was in contravention of the provisions of Sec.17(4) of the Act as aforesaid and the authorities were, therefore, justified in taking the view that their services were required to be terminated. The show cause notices were given and the appellants but they failed to show that the qualification held by them was recognised under this Act. It is an

undenied and undeniable fact that on the date of appointment of each one of these appellants, the qualification was not recognised under the Act and there was no question of their appointment as Vidya Sahayak, their appointment was illegal right from the inception and by taking up the question of termination of the appellants and by terminating their services, the concerned District Panchayats have only undone an illegality which had been committed by them at the time of appointment. Such illegal appointments could not have conferred any legal right upon the appellants to continue in service.

12. A similar question was considered by the Supreme Court in the case of Suresh Pal and ors. v. State of Haryana and ors., reported in (1987) 2 SCC 445 wherein the Certificate Course in Physical Education imparted by Shri Hanuman Vyayam Prasarak Mandal, Amravati, Maharashtra which was recognised by the Government of Haryana in 1973 for appointment to the post of Physical Training Instructor in Government schools in Haryana and on the basis of this recognition granted by the State of Haryana, to such course, certain candidates who joined the course were receiving instruction in the Institution, but during the course of study, the said course was de-recognised by the Government rendering the certificates obtained by them to be useless. The Supreme Court held that it would be unjust to refuse to recognise the certificates obtained by them and the Government was directed to recognise the certificates in such cases but the persons joining the course after the date of de-recognition were held not to be entitled to such benefit. If we apply the same principle, it will be clear that the qualification held by the present appellants could be used to their benefit for appointment at any point of time prior to 10th July 1995, i.e. the date on which the National Council for Teacher Education Act came into force and had they been appointed prior to July 1995, they could not be terminated. But in the instant case, all these appellants have been appointed in 1999-2000 when the Act was already in force and therefore, the qualification held by them could not be used to their advantage to enure the benefit of appointment as Teacher. Through this National Council for Teacher Education Act, the whole system of the teacher education was sought to be streamlined at national level so that the uniformity of the standards is maintained throughout and such a purpose could not be defeated by acting upon the qualification which was not recognised. Besides this, learned AGP has also pointed out that way back on 29th Dec.1990, a circular had been

issued by the Govt. of Gujarat which forms part of record at page 46 of Letters Patent Appeal No.478 of 2001 and the similar circular had also been issued on 11th June 1998 as has been pointed out by Mr.P.V.Hathi and yet another circular dated 13th Nov.2000 had also been issued which is annexed with Letters Patent Appeal No.381 of 2001 as Annexure.I at page 52 in which a reference has been made about the earlier circular dated 11th June 1998. Therefore, these appellants had no right of consideration for the posts in question.

13. In the light of the discussion as aforesaid, we find that the appellants had no right of consideration, much less the appointment as Vidya Sahayaks and the appointment was illegal from the very inception. The grievance which has been raised with regard to the breach of principles of natural justice, in the facts of the present case, cannot be accepted for twin reasons. Firstly, the appellants had no right and they have failed to show any prejudice caused to them. Besides this, in the facts and circumstances of the present case, admittedly, the show cause notices had been issued, may be that such notices were of a short duration and the termination orders were passed immediately, but that by itself does not vitiate the orders of termination because all that was required to be shown was as to whether the qualification was recognised or not and the fact remains that even before this Court, they have failed to show that such qualification was recognised, rather it is admitted that their qualification was not recognised under the Act.

14. It was also submitted that in some of these matters, the ad-interim orders had been passed by this Court against the termination orders and the same were continued by the learned Single Judge while rejecting the said matters and the Division Bench had also passed the interim orders and a grievance had been raised that those interim orders were not complied with and no salary has been paid in such cases. Mr.P.V.Hathi has submitted that the cases in which he represents the District Panchayat, the concerned petitioners had already been relieved before passing of the final orders. In any view of the matter, before us there is no case for initiating contempt proceedings against them. Whereas we find that there is no substance in these appeals, no benefit stands enured in favour of the appellants on the basis of the interim orders and the interim orders in any of these cases including the one which was passed in the cases in which there was only show cause notice for termination stand automatically vacated. The result is that the

interim orders passed in any of these matters cease to be operative forthwith.

15. It was argued on behalf of the appellants that certain appellants are possessing qualifications other than C.P.Ed. which are recognised under the Act and their cases may be considered on the basis of such educational qualifications which are duly recognised under the Act. It is for the concerned appellants to make appropriate representations in this regard before the concerned authorities and as and when any recruitment is held for the appropriate post for which any of the appellants holding qualifications which are recognised under the National Council for Teacher Education Act, 1993, the concerned authorities shall consider their cases in accordance with law for such appointments.

16. The upshot of the aforesaid discussion is that all these 36 appeals fail and the same are hereby dismissed. No order as to costs.

17. Since the main appeals are dismissed, there is no question of stay in any of the Civil Applications. All these 36 Civil Applications for stay are hereby rejected.

18. Even at this stage, a request was made that the interim orders be continued. We have decided the matters on merits and whereas we find that there is a clear contravention of Sec.17(4) of the Act and the appeals have been decided on merits, there is no question of continuing the interim orders. The request is hereby declined.

12th July 2001 (M.R. Calla, J.)

(N.G. Nandi, J.)
Sreeram.